

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 22-0007

IN THE MATTER

OF

MELISSA FAY

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Melissa Fay (“Fay”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 30, 2020, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A by Fay. On March 17, 2022, the Commission concluded its inquiry and found reasonable cause to believe that Fay violated G.L. c. 268A, §§ 19 and 23(b)(2).

The Commission and Fay now agree to the following findings of fact and conclusions of law:

***Findings of Fact***

1. Fay was at all relevant times the Director of Student Services for the Wareham Public Schools (“WPS”). She was appointed to the position in 2017 by the Wareham School Committee.

*Hiring of her mother*

2. As WPS's Director of Student Services, Fay recommends the hiring of a language translator or interpreter (hereinafter referred to as "translator") when she determines translation and/or interpretation services are required for school business. WPS's established procedures require Fay to write a letter to the WPS Superintendent with her recommendation. If the Superintendent approves Fay's recommendation, the translator then enters into a contract with WPS. Once a translator provides services, Fay reviews and signs the translator's invoice to acknowledge the services were provided and to verify the availability of sufficient WPS funds to pay the invoice.

3. On eight occasions between 2018 and 2020, Fay, as Director of Student Services, hired her mother to provide translation and/or interpretation services to WPS without seeking or receiving approval from the WPS Superintendent. Apart from Fay's hiring of her, Fay's mother did not on any of these eight occasions enter into a contract with WPS to provide the services.

4. On each of those eight occasions, Fay's mother submitted an invoice for payment by WPS. Fay signed seven of her mother's invoices as Director of Student Services so that they would be paid by WPS.

5. WPS paid Fay's mother a total of \$5,975 for her translation and interpretation services.

*Hiring of her son*

6. As WPS's Director of Student Services, Fay participated in the hiring process for WPS's 2019 Extended School Year program.

7. In the hiring process, Fay determined which candidates to interview and made the recommendation to the Superintendent of which candidates should be hired.

8. Under WPS's established hiring procedures, external candidates would complete a hiring application and be interviewed if they had not previously worked in the school system.

9. Fay's son was an external candidate for WPS's 2019 Extended School Year Program. Fay, as Director of Student Services, recommended that the Superintendent hire twenty-five paraprofessionals, including her son.

10. Fay's son did not submit a WPS employment application until after he was hired and was not interviewed.

11. WPS paid Fay's son \$1,461.99 for his work for the 2019 Extended School Year program.

### *Conclusions of Law*

#### §19

12. Except as otherwise permitted,<sup>1</sup> § 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2</sup> as such an employee in a particular matter<sup>3</sup> in which, to their knowledge, they or an immediate family member<sup>4</sup> has a financial

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<sup>1</sup> None of the exemptions applies.

<sup>2</sup> "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

<sup>3</sup> "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

<sup>4</sup> "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

interest.<sup>5</sup>

13. As WPS's Director of Student Services, Fay was, at all relevant times, a municipal employee as defined in G.L. c. 268A, § 1(g).

14. Fay's son and mother are members of her immediate family, as defined by G.L. c. 268A, § 1(e).

15. Each decision to hire Fay's mother to provide compensated translation and/or interpretation services to WPS and to sign Fay's mother's invoice for payment by WPS were particular matters in which Fay's mother had a financial interest.

16. When Fay participated as Director of Student Services in the particular matters of her mother's hiring and compensation as described above, she knew her mother had a financial interest in the matters.

17. The decision to hire Fay's son for a compensated paraprofessional position in the WPS's 2019 Extended School Year Program was a particular matter in which Fay's son had a financial interest.

18. When Fay participated as Director of Student Services in this particular matter by recommending to the Superintendent her son's hiring along with twenty-four other candidates, Fay knew her son had a financial interest in the matter.

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<sup>5</sup> "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *See EC-COI-84-96*.

19. Therefore, by, as Director of Student Services, participating in the hiring of her mother to provide compensated translation and/or interpretation services to WPS on eight occasions, signing seven of her mother's invoices, and participating in the hiring of her son as a compensated WPS paraprofessional, Fay repeatedly violated § 19.

§23(b)(2)

20. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a public employee from knowingly or with reason to know using, or attempting to use, their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value not otherwise properly available to similarly situated individuals.

21. The opportunity to be hired outside of WPS' established hiring procedures is an unwarranted privilege that is not properly available to persons seeking to provide compensated services to WPS.

22. Fay, as Director of Student Services, secured such unwarranted privileges for both her mother and her son by hiring her mother as a compensated translator for WPS without the Superintendent's prior approval and recommending her son's hiring as a compensated WPS paraprofessional without his prior application or interview.

23. These unwarranted privileges were of substantial value because they resulted in Fay's mother and son each receiving from WPS compensation over \$50.<sup>6</sup>

24. Fay knew that she was failing to follow WPS' established hiring procedures each time she hired her mother as a translator for WPS and when she recommended her son's hiring as a WPS paraprofessional.

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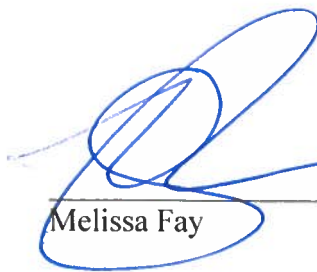

<sup>6</sup> Substantial value is defined as \$50 or more. 930 CMR 5.05.

25. Therefore, by, as the WPS Director of Student Services, securing for both her mother and son the opportunity to be hired outside of WPS' established hiring protocol, Fay knowingly or with reason to know, used her official position to secure for her mother and son unwarranted privileges of substantial value not properly available to similarly situated individuals. In doing so, Fay violated G.L. § 23(b)(2)(ii).

In view of the foregoing violations of G.L. c. 268A by Fay, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Fay:

- (1) that Fay pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$4,000 as a civil penalty for violating G.L. c. 268A, §§ 19 & 23(b)(2); and
- (2) that Fay waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

By signing below, Fay acknowledges that she has personally read this Disposition Agreement, that it is a public document, and that she agrees to all of its terms and conditions.

		STATE ETHICS COMMISSION	
	7/7/22		7/27/22
Melissa Fay	Date	David A. Wilson Executive Director	Date